Editor's note: Appealed – aff'd, Civ.No. A74-103 (D.Alaska Aug. 7, 1979)

UNITED STATES
v.
OMAR STRATMAN

IBLA 78-361 Decided October 30, 1978

Appeal from decision of Administrative Law Judge E. Kendall Clarke approving for purchase application for trade and manufacturing site. A-062517.

Affirmed.

1. Alaska: Trade and Manufacturing Sites

A cattle feedlot operation, including cattle handling facilities, grain storage, and logging operations falls within the statutory requisite of "trade, manufacture or other productive industry" as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), notwithstanding, that a feedlot operation in Alaska may differ in certain respects from a feedlot operation in the lower 48 States.

APPEARANCES: James R. Mothershead, Department Counsel, Office of the Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for appellant; Roger E. Henderson, Esq., Houston and Henderson, Anchorage, Alaska, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The Bureau of Land Management (BLM) has appealed from a March 6, 1978, decision by Administrative Law Judge E. Kendall Clarke (Judge) which approved for purchase appellee Omar Stratman's application for a trade and manufacturing site.

On May 27, 1965, Omar Stratman (appellee) filed a notice of location with BLM for a trade, manufacturing, and other productive industry site (T & M) for a use described as "grain storage and

processing along with a feedlot and stockyards." The site comprises 70 acres and is located on Kodiak Island, Alaska. On May 25, 1970, Stratman filed his application for the purchase of the T & M site which he stated was being used and occupied for the purpose of "cattle feed lot, cattle handling facilities, grain storage, and logging operations for ranch and feed lot materials." The improvements described in the application were corral, feedlot fences, clearing, sawmill, feed bunks, and three grain bins.

Stratman's application to purchase was rejected by the Alaska State Office in a decision of November 9, 1973. In Omar Stratman, 16 IBLA 222 (1974), this Board affirmed, holding that use and occupancy of the site for purposes of a cattle feedlot, cattle handling facilities, grain storage, and logging operations for ranch and feedlot materials were agricultural in nature, and therefore did not fall within the ambit of trade, manufacturing, or other productive industries required by section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970). 1/ (Stuebing, A.J., dissenting from this holding.)

The case came on for hearing before Judge Clarke as a result of an order issued by the U.S. District Court for the District of Alaska on May 6, 1976, in Stratman v. United States, Civ. No. A 74-03. The District Court's order remanding the case to the Board stated in pertinent part:

> The Administrative Law Judge assigned this case for conducting a hearing shall receive evidence and make findings of fact thereon in respect to the following matters in issue:
>
> (a) The nature and extent, on the date of application, of the business or commercial activity which the

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1/ The statute provides in pertinent part:

"Any citizen of the United States twenty-one years of age, or any association of such citizens, or any corporation incorporated under the laws of the United States or of any State or Territory authorized on May 14, 1898, by law to hold lands in the Territories, thereafter in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at $2.50 per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry, such tract of land not to include mineral or coal lands except as provided in section 270-1 of this title, and ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise * * *."

plaintiff claims as the qualifying trade, manufacture, or other productive industry on the land under application.

(b) The extent to which the land described in the application was on the date thereof actually occupied and used for the qualifying trade, manufacture, or other productive industry claimed by the plaintiff; and incidental to this matter, the amount of such land on said date which embraced improvements needed in the prosecution of such trade, manufacture, or other productive industry.

(c) Compliance with other requirements of the trade and manufacturing site law, not involved in the sub-paragraphs (a) and (b) above.

An evidentiary hearing was held in Anchorage, Alaska, on October 22, 1976.

The Judge found from the testimony of various witnesses that appellee's operation was not a grazing operation, that the cattle were held within penned areas and were fed grain stored in grain bins. He also found that the number of cattle processed could have been processed in a smaller area than 70 acres and that the operation might have been carried on in a much more intensified fashion. However, such an intensified feeding operation would require a large capital outlay for shelters, paving, drainage, and manure disposal facilities. In Alaska, as the Judge found, the cattle industry is in its infancy and appellee did not believe that he could economically build such facilities and compete in the market place.

The Judge concluded that appellee had used the entire 70 acres for the purposes of a feedlot and that a feedlot is other productive industry within the meaning of the statute. He therefore held that application for purchase should be granted.

In its statement of reasons BLM (appellant) asserts that the Judge erred in finding that the feedlot was other productive industry. It contends that use of the 70 acres is not such an operation as would fall within the definition of a feedlot, but is at best an intensive grazing operation. Appellant maintains that a feedlot in Alaska "is the same as one in the lower 48 States" and that in any event it has an agricultural purpose not cognizable under the T & M site law. Appellant further contends that only that portion of appellee's land on which his improvements are located could qualify for purchase.

[1] We base our discussion herein on the premise implicit in the transcript of hearing before Judge Fitzgerald on December 1, 1975, in the Federal District Court for the District of Alaska, in Stratman v. United States, supra, at pages 30-31, that a feedlot operation is a use of the land that is a "productive industry" within the meaning of

the statute and not one that is agricultural in nature. See concurring opinion in Omar Stratman, supra, and authorities there cited. It is not disputed as appellant contends, that appellee's use of the entire 70 acres departs from the accepted definition of feedlot which is a a relatively small area designed exclusively for fattening or "finishing" beef cattle for slaughter. However, as the evidence at the hearing showed, a feedlot in Alaska, specifically on Kodiak Island, may not, due to a variety of factors, fit the conventional definition. A. L. Brundage, an agricultural expert at the University of Alaska, testified with respect to appellee's feedlot operation. His testimony is summed up in a written memorandum addressed to Stratman's T & M site wherein he stated:

> If Mr. Stratman attempted to conduct a more intensive feedlot operation at this location on a greatly restricted area, he would have to provide animal shelters and wind breaks; grading, ditching, and probably some gravel fill within the feedlots; and the concentration of livestock within this smaller area would be much more objectionable from an environmental and esthetic standpoint than is presently the case. If he were to initiate an intensive feedlot operation at his ranch headquarters, he would also have to provide considerable capital investment in animal shelters and wind breaks as well as land preparation. Weather conditions on Kodiak Island, including precipitation, freezing rains, and wind would make the capital investment for an intensive feedlot operation prohibitive within the context of the current livestock industries there.
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> In conclusion, I believe that Mr. Stratman's feedlot operation on his T&M site is a reasonable utilization of available resources to produce butcher-block beef from range cattle, either from his or other cow/calf enterprises. I believe that is commendable that he has been able to use the natural resources represented here in lieu of expensive capital improvements and at minimum expense to the local environment. I question whether he could develop and carry out an intensive feedlot operation at this location without prohibitive capitalization to protect the livestock involved and the local environment.

Appellant cites no evidence for its assertion that a feedlot in Alaska is the same as one in the lower 48 States.

The Judge below found "that although there was some grass available within the penned areas [of the trade and manufacturing site] * * * essentially this was not a grazing operation * * * and the cattle were held within the penned areas and fed grain which had been stored in the grain warehouses." Page 4 of the decision of the Administrative Law Judge.

In view of differing environmental and economic conditions in Alaska as well as the state of development of the beef industry there we cannot conclude that the Judge erred in granting Stratman's application for purchase. We therefore affirm his decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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Edward W. Stuebing
Administrative Judge